IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2790 OF 2004

IN

SUIT NO. 2794 OF 2004

Pushpa J. Shetty. ... Plaintiff.

vs.

Minaz Ahmed Shaikh & others. ... Defendants.

Mr.V.R.Dhond i/b. Negandhi Shah & Himayatullah, for Plaintiff.

Mr.A.R.Shaikh, for Defendant nos.1 & 2.

None for Defendant no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 21st July,2005

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit under Section 6 of the Specific Relief Act in relation to the suit property being Room no.6, Leo Joseph Chawl, Sabhash Nagar, Jogeshwari (East), Mumbai-400 060. According to the plaintiff, she was occupying Room no.6 as a tenant of the premises and she was paying rent. It is further submitted that her daughter had

bought some premises and she shifted to her new premises. The plaintiff also temporarily shifted alongwith her daughter to the said new premises to help her daughter to settle down there. When she came back to the suit premises she found that she has been dispossessed by defendant nos.1 and 2. The date of dispossession is 25.7.2004. The plaintiff therefore, filed the suit under Section 6 of the Specific Relief Act and took out this notice of motion. This Court by order dated 1st September,2004, appointed Court Receiver and directed the Court Receiver to take formal possession of the premises. The defendant nos.1 and 2 though have not filed any affidavit in reply they have given copy of their affidavit in reply to the plaintiff. I have gone through that affidavit in reply. The case put up by defendant nos. 1 and 2 is that they were occupying the room in the same chawl as tenant. As the plaintiff offered to sell her room to them, the defendant no.1 agreed to purchase the room for consideration of Rs.3,75,000/-. According to defendant nos. 1 and 2, Rs.2,00,000/- were paid in cash to the plaintiff and she handed over possession of the room to defendant nos. 1 and 2 on 19.6.2004. It was further their case that thereafter they created licence of the room in favour of defendant no.3. They have produced copy of the leave and licence agreement which shows that defendant no.3 paid amount of Rs.1,50,000/- as deposit and there was no agreement on licence fee. The learned Counsel appearing for defendant nos. 1 and 2 stated that the papers have been taken back by

defendant nos. 1 and 2 and that he has no instructions.

2. The defendant no.3 is not appearing. There is report submitted by the Receiver dated 13.9.2004 wherein the Receiver states that when he visited the premises in September,2004, he found that the premises were occupied by defendant no.3. The plaintiff has filed the affidavit in rejoinder today wherein she states that defendant no.3 is no longer occupying the premises and presently there is some stranger in the premises. From the documents available on record it is clear that the plaintiff was in possession of the premises as a tenant and she was paying rent. The case put up by defendant nos. 1 and 2 and the documents produced by them do not inspire confidence, because according to defendant no.1 he wanted to purchase the premises, but he did not want to live in the premises which he had taken on lease. But the plaintiff has never claimed to be the owner of the premise and she is a tenant of the premises and therefore, there is no question of her being selling the premises to defendant nos.1 and 2. The defendant nos. 1 and 2 have supposed to have paid Rs.2,00,000/- to the plaintiff in cash. They have produced the copy of the document which sows that the plaintiff has signed the document and has acknowledged the receipt of Rs.2,00,000/-, but the plaintiff has filed the affidavit in rejoinder denying her signature on the document. The defendant nos.1 and 2 have not filed any further affidavit. Perusal of

the copy of the leave and licence agreement which is alleged to have been entered into by defendant nos. 1 and 2 in favour of defendant nos. 3 shows that though that is the agreement of leave and licence there is no licence fee agreed upon by the parties to be paid. The defendant no.3 is supposed to have paid Rs. 1,50,000/- to defendant nos. 1 and 2. Therefore, I do not see any reason to vary the order passed at ad-interim stage appointing the Receiver. However, in view of the affidavit filed by the plaintiff that now even the defendant no.3 is not found to be in possession, in my opinion, further order needs to be made. In my opinion, the following order would meet the ends of justice:-

(i) Ad-interim order passed by this Court appointing Receiver, is confirmed. The Receiver is directed to visit the premises to find out as to who is in possession of the premises. If the Receiver finds that defendant no.3 is in possession, the Receiver shall appoint defendant no.3 as his agent to be in possession of the premises on usual terms and conditions.

(ii) In case the Receiver finds that defendant no.3 is not in possession then Receiver shall take physical possession of the premises and shall take steps to appoint an agent to be in possession of the premises also on usual terms and conditions.

Notice of Motion disposed of.